

## Instructional Covid- 19 Vaccination Guide

### How do you manage mandatory vaccines for your employees?

The Victorian Government has advised that it will be introducing an extraordinary mandate that will require almost half of Victoria's workers to be vaccinated in order to legally attend their workplace. This overall measure will impact one third of Victorian workers.

Effectively, any worker who comes into contact with another worker is impacted by this legal requirement. The full list of authorized workers published by the Victorian Government on their website.

We have seen violent discontent on the streets from some workers when this requirement was made not negotiable in the Construction Industry. Consequently, what we are likely to see and experience is a continuance of this behavior, if a significant proportion of the workers refuse to get vaccinated and have their employment legally ended as an outcome. This has a highly detrimental impact, that will seep into all aspects of the economy.

Our guide aims to simplify this complex and divisive issue based on what we know so far and explains how you as a business can prepare for and respond to this new law. It will help reduce anxiety by enabling you to more effectively communicate with staff and mitigate risk to your business operations during this extended period of uncertainty.

We have created a framework that will support this advice, that you will be able to utilise moving forward to assist with the compliance requirement and to minimise the admin burden that this may create for your business.

#### What we know.

As displayed on the Premiers website, the Victorian Government has introduced from 11.59pm on the 7<sup>th</sup> October to enforce 'mandatory vaccinations requirements for Authorised Providers and Authorised Workers who are not working from home.'

This applies to all workers who:

- Work in Melbourne and Regional Victoria
- Work for an Authorised Provider or are on the Authorised Worker List
- Cannot work from home

will require to have had:

- At least their first COVID-19 vaccine dose by Friday 15 October 2021; and
- Their second dose by 26 November 2021

Unless they can show a valid medical exception from a registered medical practitioner.

Employers will be required to enquire about, sight and store evidence of the COVID-19 Vaccination status of every one of their permanent and casual workers (an extra and essential admin task in itself which will increase workload)

We expect the Victorian Government will issue updated COVID Directions later this week which will provide legal advice regarding the vaccination measures that have been announced. However, at this point it is only speculation.

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From this time, the vaccinate mandate will become law and authorised workers will need to have met the Authorised Worker Legal Requirements.

The intent is that the vaccinate mandate is for those essential roles that interact with others, so for many of our network it is aimed at roles that need to be performed onsite (eg factory roles/assessors, finance, payroll, customer service and IT). If employees (head office workers, non-customer facing employees) can work from home, then they must continue to do so.

The premise is that as soon as an Employee steps one foot on the Employers premises they need to be vaccinated.

## The Legal Stuff.

The Authorised Worker Legal Requirements have initiated multiple workplace relation questions and concerns. Some considerations the Victorian Government has not yet advised on or provided assistance with, include:

How will this apply to those essential workers who are working from home in some form of hybrid arrangement? (e.g. Work from home (WFH) three days a week, in the office two days a week?)

If the directions will not apply to home-based workers, will this just encourage and enable workers trying to perpetually WFH and avoid returning to commuter-based work? What strategies can be used to direct employees back to the office when uncertainty of the rules persists?

For workers who refuse to get the mandated vaccine and consequently lose their jobs, is this then a dismissal or a resignation? Are the inherent requirements of the role being met? Do we need to consider that this might be an Employee frustration at the initiative of the employer or could / should we be going down the path to minimise risk for the business and release them from their financial obligation to pay notice?

## Employees will ask if it is legal for the Victorian Government to compel them to be vaccinated ?

The short answer is yes! When a State is declared to be in an emergency, Public Health Directions in response to the Public Health and Wellbeing Act 2008 (Vic) gives them this power to do so. This includes health orders to mandate vaccines and associated powers. This is the first time in history that the Victorian Government has authorised such orders.

## Employees may also question whether this requirement is discrimination or breaching their human rights?

Generally, human rights law allows for limitations on human rights where the laws are necessary to protect public health and the fundamental right to life. With that in mind, of the categories that this law protects Vaccination Status is not one. Making the call that an Employee must be vaccinated to attend their workplace is not in itself an opportunity to rely on or apply for unlawful discrimination. There may be exceptions to the rule if an Employee has a medical condition or illness that prevents them from being vaccinated.

## Law Enforcement

As we know from past experience, Authorised Workers are required to carry a permit that permits them to be at work. This expectation is set to continue when travelling to work and when the Employee is at the Employers premises. In addition to their Authorized Workers Permit the Employee will also need to be able to produce photo I.D and confirmation of Vaccination Status.

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Victorian Government 'Authorised Officers' reportedly will be patrolling the State. Should they attend your workplace and find you to be in breach of your obligations you and your Employees will get fined.

The fines are considerable:

On the spot fines for up to \$1,817 for Employees and up to \$10,904 for Employers not having a permit . A court can impose a fine of up to \$21, 808 on Employees and over \$109,044 on an Employer where a worker was issued a permit but did not meet the permit requirements.

## Actions

For 'Authorised Providers' you will need to act immediately to:

Get specialist advice on the implications of the Authorised Worker Legal Requirements (that's us!).

Know exactly what you can ask (versus what you should not), communicate and convey to your Employees ( especially those whom you know will not be compliant by next Friday)

Establish a proof of vaccination register and procedure for handling the sensitive information about your employee's vaccination status.

Develop a strategy and communication plan for how you will explain the Authorised Worker Legal Requirements to your employees and what the consequence is for noncompliance.

Create and roll out a vaccination policy to Employees and your specific legal requirements in your organisation for the remainder of 2021 and into 2022 should you seek to continue to impose a vaccination requirement of staff for your worksites beyond the Victoria Government dates.

Promote or establish an Employees Assistance Program (EAP) for those workers concerned or struggling with the new legal requirement impinging on their individual health preferences. EAPs confidently deal with all kinds of concerns and provide short term counselling, assessment and can assist employees with emotional and mental health problems that may be caused by this mandate.

**Lucky our framework will help with all of the above!**

## The Proof

The Victorian Government is currently developing the technology to validate vaccination status. There are several trials currently being undertaking to sync the myGov Vaccination data to the Services Victoria app. Whilst this is still being developed, data or a certificate can be downloaded through the myGov website/app and added to devices.

It is understood that by the end of October the trials will be complete and further direction given around this direction. Given that the app will not be in place when these rules come into fruition, businesses will need to be able to separately validate that authorised workers have been vaccinated.

In the absence of approved Government technology/app this means that individual businesses will need to manage proof of vaccination through HR process such as:

- A register or employee lists
- A record of the senior manager having cited the vaccination certificates and the dates it was cited
- Statutory Declaration from Employees

Given that this is sensitive health information leaders will need to securely lock access to this information and limit access and distribution of its contents. Individuals will also need to be able prove that they have been vaccinated if they are questioned by police.

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## Implementation of a Vaccination Policy

Apart from the OHS workers compensation and other implications of requiring employees to be vaccinated to attend the workplace there are several consequences your business may face if it fails to properly address this issue. Many of these issues can be overcome with an effective, yet sensible vaccination policy in place.

Depending on your industry, there may be industry specifics that you can implement. It might be regular testing, regular education sessions, regular reviews of policies and regular risk assessments.

## How we help you

We have tried to make everything as simple, and process driven as possible. In creating our resources we have aimed to assess the legal obligation and requirements of your business with the needs of your individual employees (keeping in mind the health and privacy considerations with such policy)

Within the process it outlines that noncompliance of the policy will see normal disciplinary action processes taken and potential termination of employment if an agreement cannot be reached. If you are in this position, then we highly recommend you seek advice to ensure that you are following proper process to avoid the likelihood of a successful unfair dismissal case being raised against your business. This is particularly important if the Employee is stating a medical condition as reason for refusing to comply with the vaccination policy.

The options for keeping valued and necessary workers who refuse to get vaccinated include a combination of paid or unpaid leave or standdown for this period. Or if applicable a creative temporary solution that enables the worker to work from home. This will involve lots of one-on-one discussions with the concerned worker before being put in writing. If this is not applicable, then again it becomes disciplinary process.

The effectiveness of your vaccination policy will depend upon its successful implementation in the workplace. We recommend you implement our framework that outlines your position, provide consultation, provide support and education, and ensure privacy is maintained. It is also important to continually review the policy to ensure that it is doing what it is meant to be doing and matches the ever-changing legal requirement from the Victorian Government and CHO.

If you would like to discuss our framework, please reach out to [contact@nowactually.com.au](mailto:contact@nowactually.com.au) or call 1300 605 305.